

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PERRY W. CUNNINGHAM,)
Plaintiff,)
)
v.) Civil Action No. 04-1468
)
JO ANNE B. BARNHART,)
Commissioner of Social)
Security,)
Defendant.)

JUDGMENT ORDER

Before the court are the parties' cross-motions for summary judgment. This is an appeal from the final decision of the Commissioner denying plaintiff's eligibility for Disability Insurance Benefits (SSDI) and Supplemental Security Income (SSI) under Titles II and XVI, §§ 401-433, 1381-1383f of the Social Security Act. The ALJ concluded that plaintiff could no longer perform his past relevant work, but that he retained the residual functional capacity to perform a range of light work (Tr. 24-25, Finding Nos. 7,8). Relying upon the vocational expert's testimony, the ALJ determined that plaintiff could perform a significant number of jobs in the national economy, and therefore, was not disabled (Tr. 25, Finding Nos. 13, 14).

Plaintiff argues that the decision was not based on substantial evidence and that he is thus entitled to summary judgment. In support of this claim, plaintiff asserts that the

ALJ refused to accept his treating physician's opinion that plaintiff's medical conditions, principally lumbosacral strain, diabetes mellitus and obesity, rendered him incapable of any full-time employment. Thus, the ALJ's decision merits reversal.

Defendant argues that the ALJ's decision was in fact based on substantial evidence and should not be disturbed.

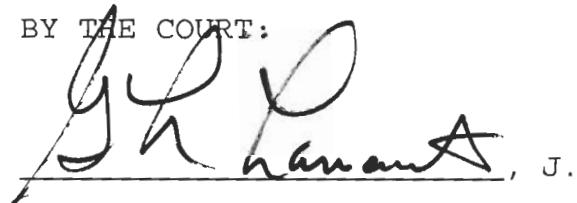
Where the Commissioner's findings are supported by substantial evidence we must affirm. 42 U.S.C. §405(g); see Williams v. Sullivan, 970 F.2d 1178, 1182 (3d Cir. 1992); Brown v. Bowen, 845 F.2d 1211, 1213 (3d Cir. 1988); see also Welch v. Heckler, 808 F.2d 264, 266-7 (3d Cir. 1988) (if supported by substantial evidence, the Commissioner's decision must be affirmed, as a federal district court may neither reweigh the evidence, nor reverse the ALJ merely because it would have decided the claim differently).

Based on the review of the Administrative Record and the briefs filed in support of each party's summary judgment motion, the court concludes that substantial evidence supports the Commissioner's finding that plaintiff is not entitled to benefits. The evidence supports the ALJ's finding that plaintiff is a substantially overweight individual who suffers from treatable diabetes, chronic knee pain, and recurring sinusitis but that he is able to perform light duty work which is readily

available, such as a storage facility rental clerk, laundry folder, plumbing hardware assembler, and assembler of printed products. The decision of the ALJ denying plaintiff's application for disability benefits will be affirmed.

Therefore, this 26th day of August, 2005, IT IS HEREBY ORDERED that plaintiff's motion for summary judgment [document #6] is DENIED. Defendant's motion for summary judgment [document #8] is GRANTED, and the Clerk of Courts is ordered to mark this case closed.

BY THE COURT:

A handwritten signature in black ink, appearing to read "G.R. Nathan", is written over a horizontal line. To the right of the signature, the suffix "J." is written.

cc: All Counsel of Record